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No. 00-660

In The
Supreme Court of the United States

FLORIDA SUGAR MARKETING AND TERMINAL ASSOCIATION, INC.,

Petitioner,

v.

UNITED STATES,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

REPLY TO BRIEF IN OPPOSITION

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CORPORATE DISCLOSURE STATEMENT PURSUANT TO RULE 29.6

Petitioner, Florida Sugar Marketing and Terminal Association, Inc., submitted a corporate disclosure statement pursuant to Rule 29.6 in its Petition for a Writ of Certiorari dated October 25, 2000. No changes to that statement are necessary.

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REPLY TO BRIEF IN OPPOSITION

Pursuant to Rule 15.6 of the Rules of this Court, Petitioner presents the following reply to the Brief of the United States in Opposition ("Govt Opposition") to Petitioner's Petition for a Writ of Certiorari.

I. The "alternative holding" doctrine does not apply; *Dooley v. United States* is *dicta* so far as the Export Clause is concerned.

The Government contends this case is controlled by an "alternative holding" in *Dooley v.*

United States, 183 U.S. 151, 46 L.Ed. 128 (1901), such that this Court need not hear this case. In *Dooley*, this Court considered a tax on goods imported into Puerto Rico from New York, and it sustained the tax on the basis of a statute, concluding the tax was on *imports*, not exports. *See infra.* It also discussed counsel's contention that the Export Clause[1] proscribed the tax for being an exaction on exported goods.[2] Here, the Government describes the Export Clause discussion as one of two "alternative holdings."

Dooley's Export Clause discussion is merely *dicta*, not a holding. This Court described it as such in *Hooven & Allison Co. v. Evatt*, 324 U.S. 652, 89 L.Ed. 1252 (1945) (*"Hooven I"*), *overruled on other grounds* (*i.e.*, on the so-called "original package" doctrine, which had nothing to do with the Export Clause), *Limbach v. Hooven & Allison Co.*, 466 U.S. 353, 80 L.Ed.2d 356 (1984) (*"Hooven II"*). The Court wrote:

> In Dooley v. United States, 183 US 151, 46 L. Ed 128, 22 S Ct 62, the Court sustained under the Foraker Act of April 12, 1900 *** the levy and collection of a

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1 Art. I, Sec. 9, Cl. 5, U.S. Constitution.

2 Citing *Woodruff v. Parham*, 75 U.S. (8 Wall.) 123, 19 L.Ed. 382 (1869), the Court characterized "export[s]" as shipments to a *foreign country* and observed that Puerto Rico was a mere dependency, such that counsel's argument would be invalid. *Dooley*, 183 U.S. at 154-55, 46 L.Ed at 130.

> tax in Puerto Rico upon goods brought there from New York. The tax was held to be a valid exercise of the power of Congress to enact laws for the government of a dependency acquired by treaty ***. The Court stated also as an alternative ground, *but one unnecessary for decision*, that the levy was not a prohibited tax on exports, since Puerto Rico was not a foreign country. [Emphasis added.]

324 U.S. at 670 n.5, 89 L.Ed. at 1266 n.5.[3] Thus, what the Government calls an "alternative holding" was language "unnecessary for decision." Language in judicial opinions unnecessary to decisions is merely *dicta*, not precedent. *Kastigar v. United States*, 406 U.S. 441, 454-55, 32 L.Ed.2d 212, 223 (such language not precedent), *reh. den.*, 408 U.S. 931, 33 L.Ed. 2d 345 (1972); *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 67, 134 L.Ed.2d 252, 273 (1996) (court bound only by portions of opinion *necessary to decision*); *United States v. Gaudin*, 515 U.S. 506, 522, 132 L.Ed.2d 444, 458 (1995) (courts may disregard *dicta*). Therefore, the *Hooven I* characterization defeats the Government's main argument here.[4]

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[3] The Government cites this footnote to support its view that *Dooley* was decided on "alternative ground[s]." *See* Govt Opposition at 4-5. *The Government does not mention, however, the Court's characterization of the Export Clause discussion as "unnecessary for decision" (emphasis added). See id.*

[4] The Federal Circuit likewise characterized *Dooley's* Export Clause discussion as *dicta*. *See* App. at 21 ("the

A reading of *Dooley* confirms the conclusion. As stated, Counsel therein attacked the challenged tax as violating the Export Clause, and the Court immediately addressed the contention. 183 U.S. at 153-54, 46 L.Ed. at 130. It then, however, reformulated the issue to whether the tax was an *import* tax for the benefit Puerto Rico. 183 U.S. at 155, 46 L.Ed. at 130. The Court concluded affirmatively and reached its holding in the case. *Id.* Thus, the discussion of the Export Clause was inessential to the decision, such that the *Hooven I* Court and the Federal Circuit (*see* note 4 *supra*) characterized the discussion correctly.

Two further principles underscore the conclusion.

First, Federal courts avoid unnecessarily deciding constitutional issues, and consequences flow from that. In *Escambia County v. McMillan*, 466 U.S. 48, 80 L.Ed.2d 36 (1984), for example, a litigant asserted claims under a statute and the Fourteenth Amendment. 466 U.S. at 51, 80 L.Ed.2d at 39. This Court, *on grounds of mootness*, declined to consider the Fourteenth Amendment when it found it was able to dispose of the case on the basis of the statute; it said:

Dooley Court's dicta ***"). The Court further said: "*** the [*Dooley*] Court did not explicitly rely on its interpretation of the Export Clause as the ground for its decision ***." App. at 20.

> We decline to decide this question [involving the Fourteenth Amendment]. As the Court of Appeals noted, the District Court's judgment rested alternatively upon the Voting Rights Act. *** *Affirmance on the statutory ground would moot the constitutional issues presented by the case.* [Emphasis added.]

Id. In *Dooley*, this Court upheld the challenged tax on a statutory ground. Perforce, when it also discussed the Export Clause it effectively discussed a moot issue, such that the discussion was nothing more than *dicta*, not a holding in the case.

Second, Federal courts lack power to decide merely abstract questions, so unnecessary discussions of issues in opinions cannot assume the status of holdings. *E.g., United States National Bank of Oregon v. Independent Insurance Agents of America, Inc.*, 508 U.S. 439, 446, 124 L.Ed.2d 402, 412 (1993) (Federal judicial power limited to resolving cases or controversies). This necessarily limits any theory of "alternative holdings." The Fourth Circuit explained the point in *Karsten v. Kaiser Foundation Health Plan*, 36 F.3d 8 (4th Cir. 1994):

> Rulings in the alternative are a tricky subject. On the one hand, they have great appeal, for they allow a judge to give multiple reasons to support his or her holding and thus, in some circumstances, allow a reviewing court the op-

> portunity to address each of the issues at once, without the cost in time and effort that would arise from each justification for a particular result being handled by seriatim appeal. ***
>
> But alternative holdings also provide courts, particularly appellate courts reviewing alternative holdings below, with the tempting opportunity *to stray into the practice of advisory opinion-making, solving questions that do not actually require answering in order to resolve the matters before them.* If the first reason given is independently sufficient, then all those that follow are surplusage; thus, the strength of the first makes all the rest *dicta*. [Emphasis added.]

36 F.3d at 11. As stated, *Dooley's* Export Clause discussion was unnecessary to the decision. The Government ignores this fact, as well as the rule on advisory opinions, when it characterizes that discussion as a "holding" in the case.

Significantly, in arguing the doctrine of "alternative holdings" the Government makes no attempt to *demonstrate* the doctrine's *application* as judged by the standards in the cases it cites. In *Woods v. Interstate Realty Company,* 337 U.S. 535, 537, 93 L.Ed. 1524, 1526 (1949), this Court invoked the doctrine when a decision *rested* on two or more grounds, such that neither could be relegated to the status of

dicta. Similarly, in *MacDonald, Sommer & Frates v. County of Yolo et al.*, 477 U.S. 340, 346 n.4, 91 L.Ed.2d 285, 292 n.4 (1986), the Court again spoke of "rest[ing]." Finally, in *Massachusetts v. United States*, 333 U.S. 611, 622-623, 92 L.Ed. 968, 977 (1948), the Court applied the "alternative holding" doctrine when "[n]either claim was either more or less *essential* to decision than the other ***" (emphasis added).

These tests are unmet here. Again, as noted, both this Court and the Federal Circuit have characterized the *Dooley* Export Clause discussion as *unnecessary to the decision*. *See supra*. Therefore, the judgment in *Dooley* did not "rest" on the Court's discussion of that Clause. Much less was that discussion "essential" to the Court's decision.

In short, there was no "alternative holding" in *Dooley* dealing with the Export Clause, so *Dooley* is not controlling here. Therefore, the Government's main argument for opposing this Petition is misdirected and should be rejected.

II. Cases citing *Dooley* are not on point.

The Government cites additional cases, asserting that each "follo[ws] *Dooley*" for the foreign-country "standard," and offers them as further reason for this Court to deny the instant Petition. Govt Opposition at 5. Those cases are not in point. The ones involving the Export Clause (or the somewhat

similar Import/Export Clause[5]) did not raise issues concerning *destination*, so they did not involve any adjudication respecting the validity of the foreign-country "standard."[6] The last case was a *Commerce Clause*[7] case where the reference to *Dooley* was purely in passing.[8] Thus, none of the cases "follo[ws]" *Dooley* in any precedential way. Accordingly, the Federal Circuit was wholly correct in saying that this

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5 Art. 1, Sec. 10, Cl. 2, U.S. Constitution.

6 *See United States v. Hvoslef*, 237 U.S. 1, 59 L.Ed. 813 (1915) (involving whether Congress could tax a particular *service* provided in the process of exporting goods, when the Export Clause speaks of taxes on *goods*); *United States v. International Business Machines*, 517 U.S. 843, 135 L.Ed.2d 124 (1996) (involving whether Congress could tax certain transport insurance); *Kosydar v. National Cash Register Co.*, 417 U.S. 62, 40 L. Ed.2d 660 (1974) (involving whether goods in a warehouse awaiting exportation had physically entered the export stream); and *Richfield Oil Corp. v. State Board of Equalization*, 329 U.S. 69, 91 L.Ed. 80 (1946) (involving whether placing oil into a vessel constituted a step in the "export journey"). Obviously, *destination* was not in issue. Any reference to the exports in question being to a foreign jurisdiction was unnecessary to the decision.

7 Art. I, Sec. 8, Cl. 3, U.S. Constitution.

8 *See Prudential Insurance Co. v. Benjamin*, 328 U.S. 408, 434 n.44, 90 L.Ed. 1342, 1362 n.44 (1946), citing *Dooley* and noting without scrutiny that *Dooley* had "held" that the Export Clause applied only to foreign commerce; *compare Benjamin with Hooven I, supra* (scrutinizing *Dooley* and disavowing the "foreign country" test). *See* discussion of *Hooven I, supra*.

Court "has never directly addressed the issue in this case ***." App. at 5.

In any event, this Court should discount examples of courts reciting the "foreign country" language flowing from the *dicta* in *Dooley*. The recitations likely reflect a "habit" similar to the "habit" the *Hooven I* Court detected respecting the use of the term "import" in certain Import/Export Clause cases. *Hooven I* stated:

> Since most imports originate in foreign countries, courts have not unnaturally fallen into the habit of referring to imports as things brought into this country from a foreign country. *** But the Constitution says nothing of the foreign origin of imports, and in none of these cases was it necessary to decision to formulate the rule in terms of origin in a foreign country. In each case the result would have been the same if the Court had treated imports merely as articles brought into the country from a point without.

324 U.S. at 669-670, 89 L.Ed. at 1266. The same is almost certainly true regarding the use in judicial opinions of the parallel words "export" and "exported." Again, the Government's arguments are misdirected.

CONCLUSION

The Government's main reasons for opposing this Petition lack merit and should be rejected.[9] At the same time, the Government fails to call into question Petitioner's showings that this case is important and merits this Court's further review. Accordingly, Petitioner prays that this Court grant Petitioner's Petition for a Writ of Certiorari.

Respectfully submitted,

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[9] The Government makes additional arguments including ones concerning the Framers' intentions when drafting the Export Clause. Those arguments go to the merits, not to whether this case is important and merits this Court's further review. Accordingly, Petitioner relies on its Petition to rebut the Government's additional arguments.